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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues  
Against:

13 **SCOTT BARNARD**  
14 **5141 Wagon Wheel Drive**  
15 **Yorba Linda, CA 92886**

16 Respondent.

Case No. *2011-726*

**STATEMENT OF ISSUES**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about July 27, 2010, the Board of Registered Nursing, Department of  
24 Consumer Affairs received an application for a Registered Nursing License from Scott Barnard  
25 (Respondent). On or about July 16, 2010, Scott Barnard certified under penalty of perjury to the  
26 truthfulness of all statements, answers, and representations in the application. The Board denied  
27 the application on October 4, 2010.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

....

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a

1 person who holds a license, upon the ground that the applicant or the licensee has  
2 been convicted of a crime substantially related to the qualifications, functions, and  
3 duties of the licensee in question, the record of conviction of the crime shall be  
4 conclusive evidence of the fact that the conviction occurred, but only of that fact,  
5 and the board may inquire into the circumstances surrounding the commission of  
6 the crime in order to fix the degree of discipline or to determine if the conviction is  
7 substantially related to the qualifications, functions, and duties of the licensee in  
8 question.

9 As used in this section, "license" includes "certificate," "permit,"  
10 "authority," and "registration."

11 8. Section 2761 of the Code states:

12 The board may take disciplinary action against a certified or licensed nurse  
13 or deny an application for a certificate or license for any of the following:

14 (a) Unprofessional conduct, which includes, but is not limited to, the  
15 following:

16 ....

17 (f) Conviction of a felony or of any offense substantially related to the  
18 qualifications, functions, and duties of a registered nurse, in which event the record  
19 of the conviction shall be conclusive evidence thereof.

20 9. Section 2762 of the Code states:

21 In addition to other acts constituting unprofessional conduct within the meaning  
22 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
23 licensed under this chapter to do any of the following:

24 ....

25 (b) Use any controlled substance as defined in Division 10 (commencing with  
26 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
27 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
28 dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription,  
consumption, or self-administration of any of the substances described in  
subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
record pertaining to, the substances described in subdivision (a) of this section, in  
which event the record of the conviction is conclusive evidence thereof.

10. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo  
contendere made to a charge substantially related to the qualifications, functions  
and duties of a registered nurse is deemed to be a conviction within the meaning of  
this article. The board may order the license or certificate suspended or revoked,  
or may decline to issue a license or certificate, when the time for appeal has

1 elapsed, or the judgment of conviction has been affirmed on appeal or when an  
2 order granting probation is made suspending the imposition of sentence,  
3 irrespective of a subsequent order under the provisions of Section 1203.4 of the  
4 Penal Code allowing such person to withdraw his or her plea of guilty and to enter  
5 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
6 accusation, information or indictment.

#### 7 REGULATIONS

8 11. California Code of Regulations, title 16, section 1444, states:

9 A conviction or act shall be considered to be substantially related to the  
10 qualifications, functions or duties of a registered nurse if to a substantial degree it  
11 evidences the present or potential unfitness of a registered nurse to practice in a  
12 manner consistent with the public health, safety, or welfare.

13 12. California Code of Regulations, title 16, section 1445, states in pertinent part:

14 . . . .

15 (b) When considering the suspension or revocation of a license on the  
16 grounds that a registered nurse has been convicted of a crime, the board, in  
17 evaluating the rehabilitation of such person and his/her eligibility for a license will  
18 consider the following criteria:

19 (1) Nature and severity of the act(s) or offense(s).

20 (2) Total criminal record.

21 (3) The time that has elapsed since commission of the act(s) or offense(s).

22 (4) Whether the licensee has complied with any terms of parole, probation,  
23 restitution or any other sanctions lawfully imposed against the licensee.

24 (5) If applicable, evidence of expungement proceedings pursuant to Section  
25 1203.4 of the Penal Code.

26 (6) Evidence, if any, of rehabilitation submitted by the licensee.

#### 27 FIRST CAUSE FOR DENIAL OF APPLICATION

28 (June 27, 2008 Criminal Conviction for Driving Under the Influence on May 30, 2008)

13. Respondent's application is subject to denial under Code sections 480(a)(1) and  
2761(f) in that he was convicted of a crime substantially related to the qualifications, functions,  
and duties of a registered nurse. The circumstances are as follows:

14. On or about June 27, 2008, in a criminal proceeding entitled *People of the State of  
California v. Scott Edward Barnard*, in Orange County Superior Court, case number

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08NM07954, Respondent pled guilty to violating Vehicle Code section 23152(a) (driving under the influence), a misdemeanor.

a. On June 27, 2008, imposition of sentence was suspended and defendant was placed on 3 years informal probation and ordered to pay fines and fees in the amount of \$1,688.50, complete a first offender alcohol program; attend and complete a Mother's Against Drunk Driving Victim's Impact Panel, and complete 10 days of Cal Trans physical labor.

b. The facts that led to the conviction are that on May 30, 2008, at approximately 3:21 a.m., Respondent was driving home from a friend's party when he was stopped by police for failing to stop at a red traffic light. Respondent admitted to the officer that he had been drinking alcohol prior to driving his vehicle. Respondent was arrested and at the police lab, Respondent's blood alcohol content was measured at .20 percent by blood draw.

c. On October 16, 2008, Respondent was issued a citation for violating CVC section 21453(a) (red signal), when he was riding his bike to work and failed to stop at a red traffic light. During the traffic stop, the police officer did a records check on Respondent and found that he had an active warrant for his arrest for failing to comply with his conditions of probation from his June 2008 DUI conviction. Respondent signed a promise to appear notice with a court date of January 21, 2009 on the warrant.

d. On January 28, 2009 a probation violation hearing was held, wherein Respondent admitted he was in violation of his probation for failing to complete the physical labor portion of his sentence and pay fees. Respondent's probation was revoked and he was sentenced to 27 days in jail. Respondent served 8 days in jail and the remaining balance of his jail time was converted to fines. Respondent was ordered to pay the remaining fines.

#### SECOND CAUSE FOR DENIAL OF APPLICATION

##### (Conviction of a Crime Involving the Consumption of Alcohol)

15. Respondent's application is subject to denial under Code sections 480(a)(3)(A) and 2762(c) in that he was convicted of a crime involving the consumption of alcohol when on June 27, 2008, Respondent was convicted of driving under the influence of alcohol. The

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1 circumstances are more specifically set forth in paragraph 14 above, and incorporated herein by  
2 reference as though fully set forth herein.

3 THIRD CAUSE FOR DENIAL OF APPLICATION

4 (Use of Alcohol in a Manner Dangerous to Himself and to the Public)

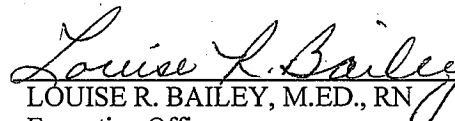
5 16. Respondent's application is subject to denial under Code sections 480(a)(3)(A) and  
6 2762(b) in that on May 30, 2008, Respondent used alcohol in a manner dangerous to himself and  
7 the public when he drove his car while under the influence of alcohol, with a blood alcohol  
8 content of 0.20 percent. The circumstances are more specifically set forth in paragraph 14 above,  
9 and incorporated herein by reference as though fully set forth herein.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
12 and that following the hearing, the Board of Registered Nursing issue a decision:

- 13 1. Denying the application of Scott Barnard for a Registered Nursing License; and  
14 2. Taking such other and further action as deemed necessary and proper.

15  
16 DATED: 2-23-11

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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